UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

TINLEY PARK J. IMPORTS, INC.
AND TINLEY PARK V. IMPORTS, INC.[1]

Employer

And **Case 13-RC-21270**

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on November 4, 2004, before a hearing officer of the National Labor Relations Board, herein referred to as the Board, to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.[2]

I. Issues

The International Association of Machinists and Aerospace Workers, AFL-CIO (herein the Petitioner) seeks an election within a unit comprised of all full-time and regular part-time journeyman, apprentice, and semi-skilled mechanics and lube rack technicians employed by the Employer.

The Employer raised two issues to be decided by the Regional Director. The first issue in this case is whether or not the petition should be dismissed as premature pursuant to the Board's "expanding unit doctrine." The Employer contends that it is currently in the process of adding a

[1] The names of the parties appear as amended at hearing.
[2] Upon the entire record in this proceeding, the undersigned finds:
a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
c. The labor organization involved claims to represent certain employees of the Employer.
d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

Land Rover franchise to its existing Volvo and Jaguar facility, which would require the hiring of additional service department employees.

In the event that the Regional Director determines that the expanding unit doctrine is not applicable in the instant case, the second issue is whether the unit petitioned-for, is an appropriate unit under Section 9(b) of the Act. The Petitioner asserts that the petitioned-for unit of journeyman and apprentice technicians is an appropriate unit. There are approximately 13 employees in the unit sought by the Petitioner. The Employer contends first, however, that a unit of journeyman and apprentice technicians is inappropriate due to the disparity in the two groups' skill levels. The Employer further contends that the only appropriate unit involving apprentice technicians must also include two service writers[3] and two detailers.

II. Decision

Based on the entire record in this proceeding and for the reasons set forth below, I find that the record does not establish that the expanding doctrine applies in the instant case and that there currently exists a substantial and representative complement of employees such that an immediate election is warranted. I also find that the unit as petitioned-for is an appropriate unit under Section 9(b) of the Act.

Accordingly, IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following bargaining unit:

> All full-time and regular part-time journeyman, apprentice, and semi-skilled mechanics and lube rack technicians employed at the employer's facility currently located at 8031 West 159th Street, Tinley Park, Illinois; but excluding managerial employees, office clerical employees and guards, professional employees, and supervisors as defined in the Act.

III. Analysis

A. The Expanding Unit

The Board's test for determining an expanding unit is considering whether the present employee complement is substantial and representative. *Laurel Associates, Inc. d/b/a Jersey Shore Nursing and Rehabilitation Center*, 325 NLRB 603, 604 (1998), citing *Endicott Johnson de Puerto Rico, Inc.*, 172 NLRB 1676 (1965). There is no definitive rule in what constitutes "substantial and representive" and the Board applies a case-by-case approach, analyzing the relevant factors in each case. The Board generally considers one or more of the following factors to determine whether the existing employee complement is sufficiently substantial and representative to order an immediate election in an expanding unit:

1. the size of the present work force at the time of the representation hearing;
2. the size of the employee complement who are eligible to vote;

[3] Throughout the record, service writers are also referred to as service advisors or assistance service managers ("ASM"). All three terms were used interchangeably throughout the hearing.

3. the size of the expected ultimate employee complement;
4. the time expected to elapse before a full work force is present;
5. the rate of expansion, including the timing and size of projected interim hiring increases prior to reaching a full complement;
6. the certainty of the expansion;
7. the number of job classifications requiring different skills which are currently filled;
8. the number of job classifications requiring different skills which are expected to be filled when the ultimate employee complement is reached; and
9. the nature of the industry.

Toto Industries (Atlanta), Inc., 323 NLRB 645 (1997), citing *Libbey Glass Division*, 211 NLRB 939 (1974); *Endicott Johnson de Puerto Rico, Inc.*, 172 NLRB 1676 (1969); *General Cable Corp.*, 173 NLRB 251 (1968). The Board's consideration when determining whether or not an immediate election is warranted is whether the present complement of employees achieves the desired balance between the objective of insuring the goal of maximum employee participation in the selection of a bargaining unit, while not depriving the current employees of immediate representation. See *Toto Industries*, 323 NLRB at 646.

The Employer operates an automobile dealership in Tinley Park, Illinois, and is engaged in the sale and service of Jaguar and Volvo automobiles and used cars.[4] The Tinley Park dealership is part of the Laurel Group, a group of automobile dealerships acquired by a company called Auto Nation, based in Florida. The Employer is wholly owned by Auto Nation. The Employer's Tinley Park facility is made up of a Volvo showroom, a Jaguar showroom, parts department, and service department. The service department, which is at issue in this case and will be discussed in more detail below, is comprised of separate service bay areas for Volvo cars and Jaguar cars, car wash and detail area, service office, and service writer areas. There are also waiting rooms for customers.

The Employer is in the process of adding a Land Rover franchise to its existing facility. Such an addition would require the physical construction of a showroom and service area for Land Rover vehicles. The expansion would also require the Employer to hire or train one to three mechanics to be certified to service Land Rover vehicles. Auto Nation has completed a Letter of Intent regarding the Land Rover addition, which includes a timeline for completion of the franchise process. At the time of the hearing, construction drawings were submitted to Land Rover, but had not yet been approved. In addition, no permits or zoning approvals had been secured and no construction had begun, despite the selection of a general contractor. At the time of the hearing, the Employer did not know when zoning approval could be secured, other than that it could take seven days to seven years. Also, at the time of the hearing, the Employer had not yet advertised for, hired, or trained any mechanic to service Land Rover vehicles, purchased any Land Rover vehicles for sale or purchased any of the tools and equipment necessary to service Land Rover vehicles.

[4] Parties do not dispute that the Employer is a single entity for purposes of this case.

Upon the record evidence in this case, I find that a substantial and representative complement of employees currently exists and an immediate election is warranted. There are approximately 13 employees in the petitioned-for unit. The record shows that with the addition of the Land Rover franchise, the Employer will either hire or train one to three mechanics to become certified to service Land Rover vehicles. Although Land Rover will not allow Volvo mechanics to do repairs on Land Rover vehicles, it will allow Jaguar mechanics, if certified by Land Rover, to service Land Rover vehicles. Therefore, it is possible that the Employer would not hire any additional mechanics after the addition of the Land Rover franchise, if it chooses to train its Jaguar mechanics. Even if the Employer hired three new mechanics to service Land Rover vehicles instead of training its current Jaguar mechanics, that addition would be less than 25% of the existing complement of employees.

In addition to the existence of a representative complement, I find that the Employer's plans for expanding its operations to include a Land Rover franchise are speculative at the current time. Since the Employer is currently without any permits and zoning approvals, the latter which could take more than several years, it is unable to begin the physical facility work necessary to house the new franchise. The Letter of Intent becomes voidable if the Employer does not meet the schedule contained therein. Because the Letter of Intent requires that the construction be completed by March 31, 2005, and the operational by May 31, 2005, the entire expansion could become a nullity if the permit process takes too long. Further, the record as a whole is clear that the Employer is unlikely to have a facility opened and staffed with trained mechanics and other staff such that Land Rover vehicles could begin to be sold before the current year's end.

Accordingly, I find that the present complement is sufficiently representative and substantial to warrant holding an immediate election.

B. Unit Composition

The Act does not require that the bargaining unit be the *only* appropriate unit, or the *ultimate* unit, or even the *most* appropriate unit; the Act only requires that the petitioned-for unit be an appropriate one, such that employees are insured "the fullest freedom in exercising the rights guaranteed by this Act." *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Tallahassee Coca-Cola Bottling Co.*, 168 NLRB 1037 (1967); *Morand Beverage Co.*, 91 NLRB 409 (1950) enf'd. 190 F.2d 576 (7th Cir. 1951). Thus, there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. *Rohtstein Corp.*, 233 NLRB 545, 547 (1977).

The Board's procedure for determining an appropriate unit is to first examine the petitioned-for unit. See, *e.g.*, *The Boeing Co.*, 338 NLRB 152, 153 (2001). The burden is on the party challenging the unit to show that the petitioned-for bargaining unit is inappropriate; if the unit sought by the petitioning labor organization is appropriate, the inquiry ends. *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988). It is well settled that the unit need only be an appropriate unit, not the most appropriate unit. *Id.; see also Phoenix Resort Corp.*, 308 NLRB 826, 827 (1992). A unit is appropriate where employees in the unit have a separate community of interest from other job classifications and in determining this community of interest, the Board examines such factors as wages, hours and working conditions, commonality of supervision,

degree of skill and common functions, frequency of contact and interchange with other employees, and functional integration. *Boeing Co.*, 337 NLRB at 153.

In situations where craft units are concerned, the Board has not determined per se that the only appropriate unit in the automotive industry must include all employees of the service department. See *Dodge City of Wauwatosa, Inc.*, 282 NLRB 459, 460 (1986). Regarding craft units, the Board has established that "a true craft unit consists of a distinct and homogeneous group of skilled journeymen craftsmen, working as such, together with their apprentices and/or helpers." *American Potash & Chemical Corp.*, 107 NLRB 1418, 1423 (1954). A journeyman craftsman is one that has the "kind and degree of skill which is normally acquired only by undergoing a substantial period of apprenticeship or comparable training." *Id*. The Board has also established that "employees who work in association with the craft but not in the direct line of progression in the craft will be excluded." *Id*. Those employees included in a craft unit must be primarily engaged in the performance of tasks requiring the exercise of their craft skills.

In 2004, the Employer implemented a team-based service system in its service department to keep track of work and employees more easily. There are two Volvo teams and two Jaguar teams and teams report to their respective service manager. A team typically consists of a service writer, two journeyman mechanics (one who is a team leader), an apprentice, and a detailer.

Service writers greet customers when they first come in through one of the two driveways leading into the service department. Volvo and Jaguar each have their own separate driveways into the service department. Service writers write up repair orders, which detail the problems of the car or the reasons why a customer has brought in a vehicle to the service department. The repair order follows the car from the beginning until the very end, when repairs are completed. Once the repair order is generated, the service writer gives it to a team leader, an experienced journeyman mechanic, to assign the diagnostic or repair work to a qualified mechanic.

When a vehicle's repair needs are not apparent, a mechanic may perform diagnostic tests on a vehicle to determine what repairs are necessary. When a mechanic has completed his diagnostic testing of a vehicle, he will inform the service writer of the parts and repairs necessary and the service writer will then pass along the information to the customer and let the customer know what services are covered under warranty, if any. The service writer will then return the repair order to the mechanic and inform him of the repairs authorized by the customer so that the mechanic can begin the repair work. As the repairs are being done, the service writer may check with the mechanic if the customer wants to know the status of the work.

Mechanics are trained and certified in a variety of areas of car repair, including manual and automatic transmissions, drivability, electrical, steering suspension, and brakes for the line of cars that they service. The Volvo and Jaguar mechanics receive training at their respective training centers in Naperville, Illinois, and Schaumburg, Illinois. They also receive online training, which are typically accessible by computer at work. Mechanics, depending on their level of experience, are also ASE (Automotive Service of Excellence) certified. ASE is a nationwide testing program for car repair, and certification is offered in many areas of car repair. ASE certification is good for five years and journeyman mechanics are typically certified in

many, if not all, ASE courses. The skill levels of apprentice mechanics vary based on their experience and length of work in automotive repair. Apprentices on each team work on repairs as other mechanics do, while receiving assistance and guidance from journeyman mechanics on some aspects of diagnostic and repair work. Apprentices' work alongside with more experienced mechanics to learn the trade and progress to the journeyman level, typically in about four to five years.

Mechanics own much of the tools and equipment necessary to perform their duties. The service bay area has a section for mechanics' tools and toolboxes. A journeyman mechanic typically owns about $40,000 to $50,000 worth of tools, including his toolbox. An apprentice mechanic, depending on how long had has been working, may have up to $10,000 in tools. Mechanics typically spend about $700 to $1,000 every year upgrading or replacing tools.

When the mechanical repairs on a vehicle are completed, the mechanics will inform the detailers that the repairs are done and the car is taken for a wash and any detailing or touch-ups requested by the customer. Detailers work in a section of the service department, apart from the mechanical section or the service bays. The detailers' job is to recondition the appearance of a vehicle, although they wash cars most of the time. Detailers also remove shrink-wrap and glue from new vehicles and wax, buff, and touch-up paint on used cars to make them look new for sale. Occasionally, a mechanic will ask the detailer if he can touch-up a scratch or nick that may have occurred during the mechanical repair, such as if a mechanic accidentally dropped a tool on the vehicle.

Once a vehicle has been repaired and washed, the mechanic will inform the service writer that the vehicle is ready for the customer. The service writer will then contact the customer in the waiting room, or by telephone if the customer is not waiting at the facility, to pay for the work and pick up the car. The service writer will then close out the paperwork for the customer and the customer will go to the cashier and pay.

Service writers and detailers are not involved in performing any diagnostic tests or mechanical repairs on cars. They also do not own any tools or attend and pass any of the training or certification courses that mechanics are required to do by Volvo, Jaguar, or the Employer. Service writers and detailers are not required to have any certifications. There is no interchange of functions and duties among the mechanics, service writers, and detailers in the Employer's service department. Service writers and detailers do not have any skills necessary to do mechanical work, and mechanics do not fill in for service writers or detailers.

Regarding compensation, all mechanics are paid on a flat rate system. Under this system, each repair has an established completion time, generally set by the manufacturer. For example, tire rotation is allotted 30 minutes and a particular transmission work task is estimated to take 9.2 hours for completion. A mechanic who performs the transmission work will be paid his hourly wage for 9.2 hours regardless of the actual time he spends on the task. Under this system, mechanics have the opportunity to be paid for more hours than they actually work. Detailers are also paid on a flat rate system, although their hourly wages are much lower than mechanics. Service writers are not paid a flate rate; rather, they are paid a salary plus a commission, based on the hours worked by the mechanics.

All employees—mechanics, detailers, and service writers—are subject to the same handbook distributed by Auto Nation, which includes disciplinary policies. All employees receive the same health, retirement, vacation, and holiday benefits. They are subject to the same application process including a background check and orientation, as well as OSHA training.

Upon the record evidence in this case, I find that the petitioned-for unit constitutes an appropriate unit for the purposes of collective bargaining. While the record shows that the functions performed by the Employer's service team employees are similar to the extent that they all relate to the service and repair of the customers' vehicles, I find that the training and skills that must be possessed, albeit in differing degrees, by the mechanics set them apart from the service writers and detailers in the service department. The Employer contends that the disparities between the apprentice and journeyman mechanics are so great that together they cannot be considered a distinct and homogeneous group separate from the rest of the service department. Specifically, the Employer argues that the lower pay rates and skill levels of apprentices as compared with the journeyman mechanics puts apprentices more in line with the detailers than the mechanics. I disagree. Although the apprentices' skill levels are lower than those of the journeyman mechanics, the Board has clearly established that this alone does not justify their exclusion. See *Dodge City of Wauwatosa, Inc.*, 282 NLRB 459, 460 (1986). See also *Fletcher Jones Las Vegas d/b/a Fletcher Jones Chevrolet*, 300 NLRB 875 (1990). The Board has also clearly established that it has not determined per se that the only appropriate unit in the automobile service industry must include all employees of the service department. *Dodge City of Wauwatosa, Inc.*, 282 NLRB 459, 460 (1986). Rather, the Board has found appropriate units of skilled journeyman craftsmen, working together with their apprentices and/or helpers who, despite the fact that apprentices may not be as skilled, are engaged solely in mechanical work as well. *Fletcher Jones Chevrolet*, 300 NLRB at 876. In the instant case, the journeyman mechanics supervise and teach the apprentices on their team various aspects of mechanical repair work, as contrasted with the detailers with whom they have no regular or consistent interaction. Further, unlike the detailers who perform absolutely no mechanical work, the apprentices perform only mechanical work, like the journeyman mechanics, with the purpose and goal of improving and advancing their craft skill of automotive repair.

Contrary to the Employer's assertions, I find that the service writers and detailers are not sufficiently integrated with the mechanics such that their exclusion will automatically make the petitioned-for unit inappropriate. The Employer's cases in this regard are distinguishable. For example, in *Austin Ford, Inc.*, 136 NLRB 1398 (1962), the Board found that the automotive line mechanics in the Employer's customer service department were not such a distinct and homogeneous group which could constitute a separate appropriate unit on a craft basis, and that the appropriate unit should include all employees in the service department. Although the Board did not specifically include service writers as part of the appropriate unit in that case, the Board's determination to include all employees in the service department was based on the fact that all service department employees, including the service writers, were experienced mechanics and assisted mechanics when needed. Although the line mechanics, whom the Petitioner sought to represent, were the most skilled, the Employer hired all of its mechanics such that it could shift its service employees from one area to another whenever work requirements demanded it. In

addition, in *Austin Ford*, when there was a line mechanic vacancy, the Employer considered all of its service employees for the open position.

By contrast, the record in this case is clear that there is no interchange between any of the mechanics with the detailers or service writers, or vice versa. The mechanics, whether they be at the journeyman or apprentice level, are the only service department employees who perform diagnostic and mechanical work. Their skills are completely dissimilar from the skills employed by the other service department employees, such as the service writers and detailers. Unlike mechanics, service writers and detailers are not required to have certain certifications to work with Volvo cars or Jaguar cars. The detailers and service writers in the instant case are not experienced mechanics. Nor does the record show that service writers and detailers own their own tools. The record is clear that a detailer is simply less skilled than mechanics and performs a specific, repetitive function day after day.[5] The record is also clear that a service writer does not perform any repairs or adjustments; except for the rare light bulb change and that he does not do that if tools are required to access the light bulb. Further, although the apprentices do not yet have the certifications that the journeyman mechanics have, they are provided with opportunities to upgrade their skills through their close interactions and work with the more experienced mechanics.

The Employer also relies on *Mallinckrodt Chemical Works*, 162 NLRB 387 (1966), which I do not find applicable to the instant case. In *Mallinckrodt*, the Petitioner sought to carve out 12 instrument mechanics from a production and maintenance unit of approximately 280 employees engaged in the production of uranium metal. The 12 instrument mechanics had been represented as part of the production and maintenance unit for 25 years. In that case, the Board outlined six factors to consider when faced with a petition for severance. Applying these factors, the Board found that a "carve out" unit of instrument mechanics was inappropriate because of the highly integrated level of the instrument mechanics' work in the production process itself, the bargaining history of the existing unit, and the fact that the Petitioner had not traditionally represented the instrument mechanic craft. Given that the facts of *Mallinckrodt* involves a production and maintenance unit and that its facts are inapplicable to the facts and issues of the instant case, I find that the Employer's reliance on *Mallinckrodt* is misplaced. The instant case does not involve a petition seeking to carve out a long-standing bargaining unit, as there is no bargaining history at all for the employees at issue. Further, the petitioned-for unit is representative of the traditional unit sought and represented by the Petitioner,[6] and as discussed above, does the Board find a unit appropriate.

Accordingly, I find that the unit as petitioned-for constitutes an appropriate unit under Section 9(b) of the Act and direct an election in that unit.

[5] Although one of the detailers, Frank Taheny, is certified in auto reconditioning and paint finish restoration excellence; such certification is not required of all detailers, and is not the same as the certification required of mechanics.

[6] The fact that the broader unit sought by the Employer is the bargaining unit at other dealerships in California and Cleveland, Ohio, does not defeat this factor, and at best, demonstrates that a broader unit would also be appropriate. However, it does not show that the petioned-for unit is inappropriate.

V. Summary

Based on the foregoing and the entire record herein, I find that (1) the present complement of employees is sufficiently substantial and representative to warrant holding an immediate election; and (2) the unit as petitioned-for is an appropriate unit consisting only of journeyman, apprentice, and semi-skilled mechanics and lube rack technicians employed at the Employer's Tinley Park, Illinois facility.

VI. Direction of Election

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strikes who have retained their status, as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

VII. Notices of Election

Please be advised that the Board has adopted a rule requiring election notices to be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to 12:01a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VIII. List of Voters

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of

voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). The Regional Director shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, Suite 800, 200 West Adams Street, Chicago, Illinois, 60606 on or before December 1, 2004**.** No extension of time to file this list will be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

IX. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by December 8, 2004**.**

DATED at Chicago, Illinois this 24th day of November 2004.

Regional Director
National Labor Relations Board
Region 13
200 West Adams Street, Suite 800
Chicago, Illinois 60606

CATS — Unit – Expanding; Unit – Craft Units; Unit – Other Scope/Definition

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